

Franklin D. Banks, Jr.
d/b/a Escalade Lounge
6247 Kennedy Ave.
Hammond, IN 46323

Permit RR45-06425
District 1

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

**I.
BACKGROUND OF THE CASE**

Franklin D. Banks, Jr., d/b/a Escalade Lounge, 6247 Kennedy Ave., Hammond, IN 46323 (“Permittee”), is the holder of an Alcohol and Tobacco Commission (“ATC”) type 210 permit, Permit RR45-06425. Permittee also applied for an ATC type 220 Sunday Sales permit and this application was assigned to the Lake County Local Board (“LB”) for their investigation and recommendation. On April 4, 2002, the LB after investigation, voted 4-0 to recommend denial of this application and the ATC adopted the recommendation of the LB to deny this application.

The Permittee filed a timely Notice of Appeal and the appeal was assigned to ATC Hearing Judge, Daniel M. Steiner (“HJ”). The appeal was heard on September 9, 2002, at the Lake County Government Center in Crown Point, IN. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. At this time, the HJ submits his proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

**II.
EVIDENCE AT THE HEARING**

**A.
WITNESSES**

The following witnesses were sworn and offered testimony at the appeal hearing:

1. Franklin D. Banks, Jr., (Banks) the Permittee. Banks testified that he has had the type 210 permit at this location since August, 2001, and that there had been a type 220 permit at the premises when he took it over. He stated he has had no

violations at the premises and that if anyone has had any problems with his music being too loud, they have never brought these objections to him. He said the police have never been there and that he has had no trash or parking problems. He does not sell alcohol for carry out and has had no problems with public indecency or prostitution. There has been one shooting across the street from his premises, but none on his premises and he has a metal detector on his premises to stop any weapons. Also, he has two private security people on the premises. On cross-examination, Banks said he had told a remonstrator that he wouldn't apply for a 220 permit, but later changed his mind. He said he had been open for a while on Sunday because Cheri Callahan had told him he could be, but when he discovered this was an error, he ceased this practice. Finally, he said he does not let people loiter on his parking lot.

2. Jacqueline Boston (Boston), who stated that her family wants to be able to have functions there on Sunday. Boston lives at 828 Field St. Hammond.
3. Anthony Higgs (Higgs), 1124 Moore St., Hammond, who stated he has not seen any problems at this premises.
4. Earline Sherman (Sherman) 2024 Hovey St., Gary who stated she has not seen any problems at these premises and as a senior citizen feels safe there.
5. Ethel Roberts (Robert) 2272 Whitcomb St., Gary, who stated that this club is one of the nicest places for black people to go in this area.
6. David Jarris (Jarris), who says he lives in the vicinity of the premises and that there is no need for these services and that the premises do not offer a positive impact. He stated that there is a parking problem and that the metal detector may keep people out of the premises who then come over to his yard. On cross examination, he stated that this has happened once also at another premises in the area and that he has talked with Banks about the problem of people urinating in his yard.
7. Dustin Shidler (Shidler) who also lives in the area and stated he once saw someone shooting drugs in the alley near the premises, called the Hammond Police Department (HPD) but they arrived too late to do any thing. He doesn't like parking in front of his house on Sunday and says that Kenwood St. is primarily white and the patrons from the premises are primarily black.
8. Patricia Guillion (Guillion) also lives in the area and said she is not opposed to the 210 permit, just to the 220. She acknowledged there was a restaurant there before with a type 220 permit.
9. Leslie Guajardl (Guajardl) also lives in the area and has problems with parking and urinating.

B.
EXHIBITS

The following exhibits were offered at the appeal hearing:

1. Permittee's Exhibit 1, a binder entitled "Petitioner's Appellate Argument, Statutes, Cases and Exhibits". This Exhibit was in 11 parts. It was admitted without objection. It included, among other things, a petition (in tab no. 11) entitled "Petition for approval of the issuance of a type 220 Sunday sales permit and the renewal of type 210 Indiana alcoholic beverage permit n. RR45-06245 in the name of Franklin D. Banks, d/b/a Escalade Lounge at 6247 Kennedy Ave., Hammond, Indiana 46323." The Petition contains 498 signatures, 105 from Hammond residents, 113 from Gary, 38 from East Chicago, 13 from Merrillville, 5 from Hobart and 224 from miscellaneous other addresses.
2. Permittee's Exhibit 2, a handwritten letter from Officer Will R. Askew, Jr., a police officer for the State of Indiana, which stated in relevant part that "Club Escalade had had no disturbances with the club itself on Sunday. In my opinion, the club should be allowed to open for business because the owner, Franklin Banks, has been in compliance with the ordinances of the City of Hammond." This exhibit was admitted without objection.
3. Remonstrators' Exhibit 3, a video tape. The HJ has withheld ruling on the admission of this tape, but now rules the Exhibit admitted.
4. Remonstrators' Exhibit 4, a police log of runs to the address of the premises. There was no evidence offered as to the ultimate disposition of these runs and the reliability and relevance of this exhibit was questioned, but it was admitted over objection.

Also, the HJ took administrative notice of the file herein, including the record of the LB proceedings.

III.
PROPOSED FINDINGS OF FACT

1. That the Permittee is the holder of a type 210 ATC permit at its location at 6247 Kennedy Ave, Hammond, IN 46323, Permit RR45-06425, and is the applicant for a type 220 permit at said location. (ATC Permit File)
2. That at the LB hearing, 11 persons appeared in opposition to the issuance of this permit. A petition entitled "Petition: No Sunday Liquor License for Escalade Lounge" containing approximately 111 signatures was admitted. Remonstrator Jarris stated, "I'm not saying that he's running a bad place or anything." Bank's attorney at the LB hearing, Tony Walker, stated there are four other premises

within a two-block area that already have type 220 permits. LB member and Indiana State Police Officer Dean Hidalgo stated “No violation by Excise Police. We got one complaint. We’re still working on it.” (Transcript of LB hearing herein).

3. There was no substantial evidence offered at either the LB or ATC Appeal Hearing that the Permittee has had problems with either Excise Police violations or documented problems with criminal violations; that the permittee has allowed his premises to become a public nuisance; nor, that he is not held in proper esteem in the community or that he is of bad reputation and character. The evidence is that other ATC permittees in his immediate area have type 220 permits and that Permittee needs a 220 permit to remain viable and competitive with the other permittees. Further, that Permittee has made substantial efforts to control the activities of his patrons while they are on his premises by installing metal detectors and hiring security guards. By statute, a permittee cannot be held responsible for the activities of persons, whether patrons of their premises or not, when the persons are not in the premises or on the “business” property of the premises. (IC 7.1-2-6-1). Purported problems with parking must be handled by the municipality involved and are not ATC violations. (ATC file, LB record, ATC appeal hearing record and the cited statute).
4. That the number of persons from Hammond who signed petitions for each side are approximately the same; the number of persons from other locations in Lake County, Indiana, who signed the Permittee’s petition total at least 160 whereas the remonstrators have none. (Exhibits from LB and ATC Appeal Hearings).
5. Any Conclusions of Law included within these Findings shall be deemed to be adopted by the ATC as their Conclusions of Law.

IV. CONCLUSIONS OF LAW

1. That the Permittee, Franklin D. Banks, Jr., 6247 Kennedy Ave., Hammond, IN 46323, is the holder of an ATC type 210 permit, Permit RR45-06425 and is an applicant for a type 220 Sunday Sales permit at the same premises. (ATC permit File).
2. That the Permittee’s application for said type 220 permit was recommended denied by the LB, citing 905 IAC 1-27-4. (Record of LB proceedings).
3. That based on the totality of the evidence, to-wit: Petitions submitted on behalf of the Permittee at the ATC appeal hearing compared with the petition and other evidence of need and desire in the community submitted on behalf of the remonstrators at both the LB hearing and the ATC appeal hearing, a finding of denying this permit on the basis of 905 IAC 1-27-4 is not supported by substantial

evidence and cannot stand. There is no credible, documented corroborative evidence that the Permittee is in violation of any other provisions of 905 IAC 1-27 or that he is otherwise not qualified to hold the type 220 ATC permit which has been applied for. (ATC file, LB record and ATC appeal hearing record).

4. Any Findings of Fact included in these Conclusions of Law shall be deemed as adopted by the ATC as their Findings of Fact.

THEREFORE, IT CONSIDERED ORDERED AND ADJUDGED, that the type 220 Sunday Sales application herein of the applicant, Franklin D. Banks, Jr., 6247 Kennedy Ave., Hammond, IN 46323, should be, and the same hereby is, granted and the recommended denial of this application by the LB and the adoption of that recommendation by the ATC is hereby reversed and the appeal of the Permittee is granted.

Date _____

Daniel M. Steiner
Hearing Judge

